

tions or either of them, whether, in fact, they are to be deemed excepted from the plaintiff's grant. The claims were located and recorded, the one as the "Zenith," and the other as the "Paris Belle." The location of the "Zenith," which, according to the evidence, was made on the 15th June, 1892, occupied most of the land which was afterwards staked as the "Paris Belle." The place where the present shaft of the "Paris Belle" is sunk is at the point where Noel did part of his assessment work on the "Zenith." Section 10 of the Mineral Act provides that in the event of a free miner entering upon lands already occupied, for other than mining purposes, he shall, previous to entry, give adequate security to the satisfaction of the Gold Commissioner, and after entry shall make compensation for any loss or damage which may be caused by reason of such entry. It is admitted that in this case no security was given, or compensation paid or tendered.

The plaintiffs contend that at the time of the "Paris Belle" location the land was already occupied by them for other than mining purposes, and was therefore not subject to location as a mineral claim, except under conditions which it was admitted were not complied with; in support of which contention the uncontradicted evidence of Edward J. Roberts proved the situation of the claim in Block 12, adjoining the town of Rossland on the northeast; that the railway company had upon Block 12 a line of road and the station of Wanita; that the road was located in 1892 and was finished in 1893, and that the station of Wanita was built in May or June, 1893. It was burned down or destroyed, and a new station, in the same place, constructed in the fall of 1893, and the railway company has occupied these stations from the time of their building until now, and has operated the railway since it was constructed. The records, both of the "Zenith" and the "Paris Belle," were further impeached, on the ground that no vein or lode of mineral had been discovered, that no mineral in place had been discovered, and that, therefore, the land was incapable of being located as a mineral claim.

To the defendants' contention that the "Zenith" location existed at and prior to the 23d of March, 1893, the plaintiffs replied that the "Zenith" was never properly located, or staked, represented or worked, but was abandoned by Noel in 1892, and had consequently lapsed and become again waste lands of the Crown. Upon the evidence the plea of abandonment by Noel of the "Zenith" seems clearly established. He located the land in partnership with Joseph Villendre, although he recorded in his own name only. He tells us that three or four months after the location he did some work starting a shaft. The work was of about the value of \$50. His partner was supposed to do his share of the assessment work but did not do so, and consequently he, Noel himself, did no more. Noel says, "I remonstrated with him for not doing his part of the assessment work, and he said he did not think he would do his portion; and when he said he was not going to do his work I quit. I never did any more assessment work on the "Zenith." There is nothing in the evidence at variance with the testimony of Noel, nor anything to show that any further work was done upon that location.

The "Zenith" claim, therefore, having been abandoned, I am of opinion that immediately upon abandonment it reverted to and became the property of the Crown (*Regina v. Demers*, 22 S. C. R. 482), and as such came within the plan filed by the plaintiffs on the 23rd of March, 1893, as part of block 12, which block was afterwards adopted as a division of the land by the government, and conveyed to the plaintiffs in one lot by one conveyance by the government.

It is established upon the evidence that before any other attempt at location of a mineral claim within block 12, the plaintiff's railway was constructed and the station of Wanita built and rebuilt thereon. The block therefore became lawfully occupied, as to portion of it at least, for other than mining purposes, the evidence showing that the line was located in 1892 and finished in 1893. The plaintiff company being then in actual, visible, occupation of the block was in point of law, and, following well recognized legal authorities, to be